

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Livingston Smith, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood; that

(1) The Carrier violated the effective agreement when it paid Section Laborer D. L. Hagensick at his straight time rate of pay for service performed on Saturdays and Sundays between the hours of 7 A. M. and 4 P. M., instead of compensating him for this service at the time and one-half rate of pay;

(2) Section Laborer D. L. Hagensick be paid the difference between what he received at his straight time rate of pay and what he should have received at his time and one-half rate of pay for service performed on March 11, 12, and 25, 1950, during the hours referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to March, 1950, Section Laborer D. L. Hagensick was employed as a section laborer on the I&D Division, Marquette, Iowa. Mr. Hagensick has a seniority date as section laborer of August 30, 1948.

Prior to March 5, 1950, Laborer Hagensick was laid off in force reduction. During the time force reduction was in effect, Mr. Hagensick's seniority was protected in the manner provided in the effective agreement.

The crew from which Mr. Hagensick was furloughed, is assigned to a five-day work week—Monday through Friday, with Saturday and Sunday as rest days. The hours of the assignment are from 7:00 A. M. to 12:00 noon and 1:00 P. M. to 4:00 P. M.

On Saturday, March 11, 1950, Mr. Hagensick was called to render service in his regular crew and on this date worked from 6:00 A. M. to 12:00 noon, and from 1:00 P. M. to 10:00 P. M. For this service he was paid eight (8) hours at the straight time rate and seven (7) hours at the time and one-half rate.

On Sunday, March 12, 1950, Mr. Hagensick was called to render service in his regular crew and on this date he performed service from 7:00 A. M. to 12:00 noon and from 1:00 P. M. to 4:00 P. M. He was paid for the eight (8) hours service rendered at the straight time rate of pay.

days—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the State or Nation or by proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half with a minimum of two (2) hours and forty (40) minutes at the rate of time and one-half."

were entitled to the time and one-half rate—but Saturday, March 11th, was not the rest day of employe Hagensick. That was the first day in his work week on which he had performed service. He was not a member of the regular crew. He was a furloughed employe called into service in an emergency and had no assignment, he had no rest day and he was entitled to time and one-half rate only under the following conditions:

1. For work which he performed in excess of 8 hours on any day
2. When he performed work in excess of 40 straight time hours in his work week
3. When he worked more than 5 days in his work week
4. If and when he performed work on a holiday.

In this instance none of those conditions prevailed and he, therefore, has been properly paid, at the straight time rate, for work which he performed between 7:00 A. M. and 4:00 P. M. on March 11th, 1950.

What we have said above with regard to the claim of March 11th, 1950 also applies to the claim of March 12th, 1950. However, we should also like to add that by reason of the provisions of Rule 23 (j) quoted above, the time and one-half rate would not apply to work performed on Sunday, March 12th, because the provisions applying punitive rates for Sunday as such were eliminated effective September 1st, 1949.

What we have said with regard to the claim for Saturday, March 11th, also applies to the claim for Saturday, March 25th, 1950. During employe Hagensick's work week (Monday, March 20th through Sunday, March 26th) the only work which the claimant performed was as follows:

March 24th . . . . Friday . . . . . 5 hours from 1:00 A. M. to 6:00 A. M.

March 25th . . . . Saturday . . . . . 8 hours from 7:00 A. M. to 12:00 Noon, and from 1:00 P. M. to 4:00 P. M.

For the reasons outlined above, it is the Carrier's contention that there is no rule or provision which supports the claim that employe Hagensick should have been paid the rate of time and one-half for work which he was called into service to perform between 7:00 A. M. and 4:00 P. M. on March 11th, 12th and 25th, but to the contrary, the schedule rules provide that the claimant be paid the straight time rate for work which he performed during those hours on the three days in question, which is in accordance with the payment which the Carrier has made to him and we, therefore, respectfully request that the claim be declined.

All data contained herein has been presented to the Employees.

(Exhibit not reproduced.)

**OPINION OF BOARD:** Claimant herein was laid off his position on August 14, 1949. The Carrier herein, in accordance with the seniority provisions of the effective agreement, called Claimant to perform work on five days during the month of March, 1950. Claim here is made for compensation

at the rate of time and one-half for work performed on Saturday, March 11, Sunday, March 12, and Saturday, March 25.

On the three dates above mentioned the Claimant worked 8 hours and was compensated therefor at the straight time hourly rate.

The Organization takes the position that the Claimant, when called to perform service became a member of the crew and was required to perform service on the regular rest days of the crew.

It is further contended that the Claimant was called for extra service and directed to perform work not a part of a regular work period, by virtue of which payment at the rate of time and one-half is required under cited Rules, and/or the Memorandum of Agreement of July 29, 1947.

The Respondent asserts that the Claimant, a furloughed, unassigned employe, performed work on a day that was not a part of the crew's assignment and a such was properly compensated under Rule 23 (k) since the crew involved had no regular hours on either Saturday or Sunday. The Carrier further alleges that Claimant as a furloughed employe had no assignment as such and, therefore, could not be said to have assigned rest days.

It is uncontroverted that the Claimant was properly given the work in question in accordance with his seniority and that the crew to which he was assigned regularly worked 8 hours daily, Monday through Friday, with Saturday and Sunday as rest days.

The Claimant at the time in question was a furloughed employe and as such had no regular assignment. On each of the days in question, March 11, 12 and 25, the Claimant worked 8 hours. He had not worked 5 days nor a total of 40 hours during the work week.

Rule 23 (k) rather than the Rules cited and the Memorandum of Agreement of July 29, 1947, applies to the pertinent facts of record in this Docket:

“(k) Work on Unassigned Days—

Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.”

Said Rule was properly applied by the Respondent.

In determining that Rule 23 (k) of the Agreement is controlling herein the Board specifically states that nothing in this Award is to be construed as a basis for extending the presently existing five day week to either a six or a seven day operation.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of April, 1952.